

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No. 16-20394

VOLKSWAGEN AG,

Defendant.

INITIAL APPEARANCE AND ARRAIGNMENT

BEFORE HON. ANTHONY P. PATTI

United States Magistrate Judge
Theodore Levin U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, March 10, 2017)

APPEARANCES: JOHN K. NEAL, ESQUIRE
Appearing on behalf of the Government.

JASON M. WEINSTEIN, ESQUIRE
CHRISTOPHER S. NIEWOEHNER, ESQUIRE
Appearing on behalf of Defendant
Volkswagen AG.

ALSO PRESENT: MANFRED DOESS, ESQUIRE
Volkswagen AG General Counsel

TRANSCRIBED BY: MARIE METCALF, CVR, CM
Federal Official Court Reporter
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*(TRANSCRIPT PRODUCED FROM DIGITAL VOICE RECORDING;
TRANSCRIBER NOT PRESENT AT PROCEEDINGS)*

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1 Detroit, Michigan

2 Friday, March 10, 2017

3 At about 9:08 a.m.

4 * * *

5 DEPUTY COURT CLERK: The Court now calls case number
6 16-20394, defendant number eight, the United States of
7 America versus Volkswagen AG.

8 THE COURT: Counsel, would you please put your
9 appearances on the record?

10 MR. NEAL: Good morning, Your Honor. John Neal
11 appearing on behalf of the United States.

12 THE COURT: Good morning.

13 MR. WEINSTEIN: Good morning, Your Honor. Jason
14 Weinstein from Steptoe & Johnson appearing on behalf of
15 Volkswagen.

16 THE COURT: Do any other attorneys want to put their
17 appearances on?

18 MR. NIEWOEHNER: Chris Niewoehner on behalf of
19 Volkswagen.

20 THE COURT: Okay. Anyone else for the government?

21 MR. NEAL: No, Your Honor.

22 THE COURT: Okay. Thank you.

23 All right. And I understand that there is a
24 corporate representative from Volkswagen AG here.

25 And who is that, please?

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1 MR. WEINSTEIN: That's correct, Your Honor. It's
2 Manfred Doess, the general counsel.

3 THE COURT: Okay.

4 MR. DOESS: Good morning, Your Honor.

5 THE COURT: Good morning, Mr. Doess.

6 For purposes of these proceedings, I'm going to from
7 this point forward refer to Volkswagen AG as either the
8 corporation or Volkswagen, okay? Does everyone understand
9 that if I make those references, that's what I'm referring
10 to?

11 MR. NEAL: Yes, Your Honor.

12 THE COURT: Mr. Doess, do you understand?

13 MR. DOESS: I understand, that.

14 THE COURT: Thank you.

15 All right. Let me just ask Mr. Doess some
16 questions.

17 Could you just tell us what your position is in the
18 corporation?

19 MR. DOESS: Your Honor, My position in the company
20 is general counsel. I hold this position now since January
21 1, 2016.

22 THE COURT: Okay. All right. Well, this is the
23 date and time set for an initial appearance and arraignment
24 in the case that's just been called.

25 Before we go any further, I just want to ask you a

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1 couple of questions.

2 First of all, in terms of language, are you here
3 from Germany?

4 MR. DOESS: Yes.

5 THE COURT: Is German your first language?

6 MR. DOESS: Yes, that's correct.

7 THE COURT: Are you able to fluently understand
8 English?

9 MR. DOESS: I understand English and speak the
10 language, yes.

11 THE COURT: Okay. And you speak it fluently?

12 MR. DOESS: I speak it fluently.

13 THE COURT: And you're able to read English as well,
14 fluently?

15 MR. DOESS: That's my role in the company, so --

16 THE COURT: Okay, thank you. So you are comfortable
17 proceeding in English?

18 MR. DOESS: Absolutely.

19 THE COURT: All right. And there's no need for a
20 translator then?

21 MR. DOESS: No, Your Honor.

22 THE COURT: All right, great. Thank you.

23 Also, are you, Mr. Doess, duly authorized to speak
24 on behalf of Volkswagen in Court today?

25 MR. DOESS: Absolutely.

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1 THE COURT: All right. And are you authorized to
2 bind it by your statements, including binding it for the
3 purposes of entering a plea?

4 MR. DOESS: That's correct, Your Honor.

5 THE COURT: And is that authorization memorialized
6 by a corporate resolution?

7 MR. DOESS: It is, Your Honor.

8 THE COURT: And was that resolution adopted by the
9 corporation's board of directors?

10 MR. DOESS: That's correct, Your Honor.

11 THE COURT: Does your authority to act on behalf of
12 the corporation include the authority to waive the right to
13 indictment by a grand jury?

14 MR. DOESS: Yes, Your Honor.

15 THE COURT: Okay. Then we will proceed with the
16 initial appearance.

17 In the case that's been called, Volkswagen is
18 charged in a third superseding information in Count One with
19 conspiracy to defraud the United States, to commit wire
20 fraud, and to violate the Clean Air Act.

21 In Count Two, it is charged with obstruction of
22 justice.

23 In Count Three, it is charged with entry of goods by
24 false statement.

25 Mr. Doess, have you received a copy of the third

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1 superseding indictment?

2 MR. DOESS: I have, Your Honor.

3 THE COURT: And have you been able to read through
4 the third superseding -- excuse me, third superseding
5 information?

6 MR. DOESS: I've been able to do so.

7 THE COURT: Okay. And have you been able to read
8 that through and discuss it with your counsel and get any
9 advice - that's your outside counsel - getting advice that
10 you thought was necessary before coming to court today?

11 MR. DOESS: That's correct, Your Honor.

12 THE COURT: All right. Due to the nature of the
13 charges, I want to make sure that Volkswagen is aware of
14 certain rights.

15 First of all, the corporation has the right to be
16 represented by counsel, not just today, but going forward at
17 all critical stages of these proceedings, and has the right
18 to have counsel with it in court, the right to have counsel
19 help prepare it for trial, the right to have counsel with its
20 -- those in the corporation, if they're questioned, and the
21 right to seek and obtain advice from counsel as necessary.

22 Do you understand that?

23 MR. DOESS: I understand and appreciate that.

24 THE COURT: Okay. Also, the corporation has the
25 right to remain silent. That is, that those who are

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1 authorized to speak on its behalf may refrain from making any
2 comments.

3 MR. DOESS: I understood that.

4 THE COURT: You understand that, okay.

5 And do you further understand that any statements
6 made by the corporate officers, directors, or high level
7 managers, including yourself, as the representative here, or
8 by anyone with authority to bind the corporation, can and
9 will be used against the corporation in a court of law and in
10 the prosecution of this case?

11 MR. DOESS: I perfectly understand this, Your Honor.

12 THE COURT: Okay. All right. Now, the charges are
13 presented in an information, in this case, the third
14 superseding information.

15 I want to make sure that you understand that
16 Volkswagen does not need to proceed on information, but may
17 instead insist that the United States government take this
18 case to a grand jury to obtain an indictment to establish
19 that there is probable cause to believe that Volkswagen
20 committed the acts that are alleged.

21 MR. DOESS: I understand this.

22 THE COURT: Okay. Do you understand how a grand
23 jury works?

24 MR. DOESS: I understand this.

25 THE COURT: Okay. Now, it's my understanding that

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1 the corporation wishes to proceed on information and waive
2 its right to an indictment by a grand jury, is that correct?

3 MR. DOESS: That's correct, Your Honor.

4 THE COURT: All right. And have you had the
5 opportunity to discuss that decision with counsel and get any
6 advice that you thought was necessary?

7 MR. DOESS: On numerous times, Your Honor.

8 THE COURT: Okay, thank you. Have any threats or
9 promises been made to induce you to waive indictment on
10 behalf of the corporation?

11 MR. DOESS: No, never.

12 THE COURT: And let me just ask Mr. Weinstein, is
13 there any reason that defendant should not waive indictment?

14 MR. WEINSTEIN: No reason, Your Honor.

15 THE COURT: All right. I have been presented with a
16 document that's called waiver of indictment. And it has the
17 signatures of Manfred Doess and Jason Weinstein on it.

18 Mr. Doess, is that your signature over your name?

19 MR. DOESS: It is my signature, Your Honor.

20 THE COURT: Okay. And you've been able to read
21 through this waiver of indictment? You understand it?

22 MR. DOESS: I read it and understood it.

23 THE COURT: Okay. And you've been able to discuss
24 this document with your counsel as well?

25 MR. DOESS: That's correct, Your Honor.

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1 THE COURT: And was this signed today?

2 MR. DOESS: Yes.

3 THE COURT: All right. I find that Volkswagen has
4 made a knowing and competent waiver of indictment. I'll
5 proceed to arraign on the third superseding information.

6 As I mentioned before, Count One of the third
7 superseding information charges Volkswagen with conspiracy.

8 If the corporation pleads guilty or is found guilty
9 of that charge, it can be sentenced to a fine of up to
10 \$500,000, or the greater of twice the gross gain, or twice
11 the gross loss, and probation of up to five years.

12 As to the charges that are alleged in the third
13 superseding information in Count Two, obstruction of justice,
14 if Volkswagen pleads guilty or is found guilty of that
15 charge, it can be sentenced to a fine of up to \$500,000, or
16 the greater of twice the gross gain, or twice the gross loss,
17 and probation of up to five years.

18 As to the allegations that are made against
19 Volkswagen in Count Three, entry of goods by false statement.
20 If Volkswagen pleads guilty or is found guilty of that
21 charge, it can be sentenced to a fine of up to \$500,000, or
22 the greater of twice the gross gain, or twice the gross loss,
23 and probation of up to five years.

24 Have I correctly stated the charges and potential
25 sentences and penalties?

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1 MR. NEAL: You have, Your Honor.

2 THE COURT: Counsel?

3 MR. WEINSTEIN: Yes, Your Honor.

4 THE COURT: All right. Mr. Doess, I've received
5 defendant's acknowledgment of information, and again, that
6 has your name and your counsel, Mr. Weinstein's name on page
7 two with signatures above both.

8 Is that your signature above your name on page two?

9 MR. DOESS: That's my signature.

10 THE COURT: And did you sign that today?

11 MR. DOESS: I did, Your Honor.

12 THE COURT: Okay. All right. Mr. Doess, do you
13 understand the charges that have been alleged against the
14 corporation?

15 MR. DOESS: I understand the charges, Your Honor.

16 THE COURT: Thank you.

17 Counsel, do you wish for formal reading of the third
18 superseding information?

19 MR. WEINSTEIN: No, Your Honor.

20 THE COURT: All right. How does the company wish to
21 plead, that is, how does Volkswagen AG wish to plead with
22 respect to Counts One, Two and Three of the third superseding
23 information?

24 MR. WEINSTEIN: Your Honor, we will stand mute at
25 this time in deference to the fact that we're going to enter

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1 a plea of guilty later this morning.

2 THE COURT: All right. Well, then the Court at this
3 time will enter a plea of not guilty on behalf of Volkswagen
4 AG as to all of the counts that are set forth in the third
5 superseding information.

6 It's my understanding that from here you'll be
7 heading up to Judge Cox's courtroom for the plea hearing, is
8 that right?

9 MR. NEAL: That's correct, Judge.

10 MR. WEINSTEIN: That's correct, Your Honor.

11 THE COURT: All right. Is there anything that needs
12 to be discussed that we haven't already discussed today?

13 MR. NEAL: Nothing from the government, Your Honor.

14 MR. WEINSTEIN: Nothing from Volkswagen, Your Honor.

15 THE COURT: Okay. Are both sides satisfied that the
16 arraignment is complete?

17 MR. NEAL: We are, Your Honor.

18 MR. WEINSTEIN: Yes, Your Honor.

19 THE COURT: Okay. Thank you.

20 MR. NEAL: Thank you, Judge.

21 DEPUTY COURT CLERK: Court is in recess.

22 (Court in recess at about 9:19 a.m.)

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C E R T I F I C A T I O N

I, Marie J. Metcalf, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, do hereby certify that the foregoing is a correct transcript of the digital sound recording of the proceedings in the above-entitled matter and has been prepared by me or under my direction.

s\Marie J. Metcalf March 13, 2017

Marie J. Metcalf, CVR, CM (Date)